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NOT FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

**CATHY A. CATTERSON
U.S. COURT OF APPEALS**

ESMIRA ADAMIAN; ANNA EDIGARIAN,

Petitioners,

v.

IMMIGRATION AND NATURALIZATION
SERVICE,

Respondent.

No. 02-70725

Agency Nos. A74-431-527
A74-431-528

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted December 4, 2003**
Pasadena, California

Before: PREGERSON, COWEN***, and W. FLETCHER, Circuit Judges.

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

*** The Honorable Robert E. Cowen, Senior United States Circuit Judge for the Third Circuit, sitting by designation.

The petitioners seek review of the Board of Immigration Appeals' ("BIA") denials of their motion for reconsideration and motion to remand and supplement. The petitioners have failed to demonstrate that the BIA abused its discretion in denying their motion for reconsideration. *See Cano-Merida v. INS*, 311 F.3d 960, 964 (9th Cir. 2002). Additionally, the petitioners' motion to remand and supplement is properly construed as a motion to reopen, and, as such, it was not timely filed. *See Varela v. INS*, 204 F.3d 1237, 1239 n.4 (9th Cir. 2000) ("A motion to reopen is the correct motion to file when seeking to present new facts not already in evidence."); 8 C.F.R. § 1003.2(c)(2) (a motion to reopen "must be filed no later than 90 days after the date on which the final administrative decision was rendered in the proceeding sought to be reopened"). Moreover, the petitioners have not demonstrated that they have met the unavailability or materiality requirements for a motion to reopen. 8 C.F.R. § 1003.2(c)(1) ("A motion to reopen proceedings shall not be granted unless it appears to the Board that evidence sought to be offered is material and was not available and could not have been discovered or presented at the former hearing . . ."). For the foregoing reasons, the petition for review is denied.

DENIED.